

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 14444 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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PAN PIPES RESPLENTANTS LTD & 1 - Petitioner(s)

Versus

STATE BANK OF SAURASHTRA - Respondent(s)

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Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1 - 2.

MR AS VAKIL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/08/2006

ORAL JUDGMENT

1. Learned advocate Shri Shirish Joshi appears for the petitioners and learned advocate Shri AS Vakil appears for the respondent.

2. Though this petition was admitted by an order dated 18.7.2005 and the same has been placed before this Court for confirmation of interim relief, learned advocates appearing of the parties have made detailed submissions and requested this Court to dispose of the petition finally.

3. In the present petition, the petitioner has challenged a notice dated 14.5.2005 issued under subsection (2) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred to as 'the said Act'). By the impugned notice, the respondent Bank seeks to recover an outstanding sum of Rs.8,10,39,392/- from petitioner No.1 Company.

4. Two main contentions have been raised on behalf of the petitioners in support of the challenge. Firstly it is contended that the respondent Bank could not have pursued two parallel remedies. It is contended that the respondent Bank has already filed application before the Debt Recovery Tribunal against

the petitioners in respect of the very same subject matter and that the respondent Bank cannot resort to the remedy available under the said Act. In other words, it was contended that before initiating proceedings under the said Act, the respondent Bank must withdraw its application filed before the Debt Recovery Tribunal. In this regard, reliance was placed on the provisions contained in sub-section (1) of section 14 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993") as amended by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act 2004. On the basis of third proviso added to sub-section (1) of section 19 of the Act of 1993, it was urged before this Court that the Legislature now has given statutory recognition to the principle of election of remedies.

5. Learned single Judge of this Court in Special Civil Application No.2104 of 2006 and allied matters by judgment dated 1.5.2006 turned down such an argument and has held that despite the amendments in section 19 of the Act of 1993, it is not necessary that the Bank or the Financial institutions must

elect the remedy.

6. By a detailed separate judgment passed today in Special Civil Application No.12108 of 2006, I have respectfully concurred with the above view of the learned single Judge of this Court. Without separately giving reasons in this order, following the ratio of the above decision, I find that the contention of the petitioner cannot be accepted.

7. The second contention pressed in service by the learned advocate for the petitioners is that petitioner No.1 Company is a sick unit and proceedings in respect thereof being Case No.905/04 are filed before the Board for Industrial & Financial Reconstruction. It is stated that the said proceedings are still pending. By virtue of the provisions of section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter to be referred to as 'SICA') no proceedings for recovery of the dues can be initiated.

8. On the other hand, learned advocate Shri Vakil appearing for the respondent has pointed out that the

petitioners have challenged the notice issued under section 13(2) of the said Act and at this stage, the petition would not be maintainable. He further submitted that in any case, by virtue of section 41 of the said Act read with the scheduled appended to the said Act, provisions of SICA stand amended. He pointed out that in sub-section (1) of section 15 of the SICA, further proviso has been added by virtue of which upon the secured creditors representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured credits, taking any measures to recover their secured debt under section 13(4) of the said Act, any reference pending before the BIFR would abate. Learned advocate Shri Vakil has also submitted that IDBI has also now issued notice to the petitioners seeking recovery of its amount.

9. Considering the submissions made, it is apparent that the petitioners have approached this Court only against the show cause notice issued under section 13(2) of the said Act. The Hon'ble Supreme Court in

the case of Mardia Chemicals Ltd v. Union of India, (2004) 4 SCC 311, in terms held that at the stage when the objections of the borrower are disposed of by the secured creditor and reasons thereof are communicated to the borrower, the borrower will not have the right to approach the Debt Recovery Tribunal against such communication of reasons and the only remedy available thereafter would be under section 17 of the said Act once action under sub-section (4) of section 13 is taken.

10. I also find that, as pointed out by learned advocate Shir Vakil for the respondent, section 41 of the said Act provides for amendment of certain specified enactments as per the schedule appended to the said Act. Third entry in the said schedule pertains to SICA and the amendment in sub-section (1) of section 15 reads as follows:

"In section 15, in sub-section (1), after the proviso, insert the following:-

"Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of that Act:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board of Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under sub-section(4) of section 13 of that Act."

As per the said amendment, upon secured creditors representing not less than three-fourth in value of the amount outstanding due taking any of the measures as envisaged in sub-section (4) of section 13 of the said Act, reference pending before the BIFR would abate. The contention of the learned advocate for the petitioners, therefore that on account of the pendency of such a reference, the respondent Bank cannot proceed further in accordance with the provisions contained in the said Act cannot be accepted. It is true that no action under sub-section (4) of section 13 has yet been taken by the respondent Bank. This Court has, however, by an ad-

interim relief granted on 18.7.2005 precluded the respondent Bank from taking any such steps. It is, therefore, not open for the petitioners to take the shelter under the pendency of the proceedings before the BIFR and prevent the respondent Bank from taking further action in accordance with the said Act. In any case, this Court is concerned only with the validity of the notice under section (2) of section 13 of the said Act. Though in exercise of writ jurisdiction, in a given case, may intervene at this stage also, in the facts of the present case I do not find any such necessity.

11. In the result, the petition is rejected. Rule is discharged. Interim relief stands vacated.

12. At the request of the learned advocate for the petitioners, this order shall stand stayed upto 8th September, 2006.

(Akil Kureshi, J.)

(vjn)